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16 *Possession*

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18 **UNITED STATES BANKRUPTCY COURT**
EASTERN DISTRICT OF WASHINGTON

19 In re:

20 ICAP ENTERPRISES, INC., *et al.*,

21 Debtors. ¹

Chapter 11

Lead Case No. 23-01243-WLH11
Jointly Administered

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23 ¹The Debtors (along with their case numbers) are iCap Enterprises, Inc. (23-01243-11); iCap Pacific NW Management, LLC (23-01261-
11); iCap Vault Management, LLC (23-01258-11); iCap Vault, LLC (23-01256-11); iCap Vault 1, LLC (23-01257-11); Vault Holding
24 1, LLC (23-01256-11); iCap Investments, LLC (23-01255-11); iCap Pacific Northwest Opportunity and Income Fund, LLC (23-01253-
11); iCap Equity, LLC (23-01247-11); iCap Pacific Income 4 Fund, LLC (23-01251-11); iCap Pacific Income 5 Fund, LLC (23-01249-
25 11); iCap Northwest Opportunity Fund, LLC (23-01253-11); 725 Broadway, LLC (23-01245-11); Senza Kenmore, LLC (23-01254-
11); iCap Campbell Way, LLC (23-01250-11); UW 17th Ave, LLC (23-01267-11); iCap Broadway, LLC (23-01252-11); VH 1121 14th
26 LLC (23-01264-11); VH Senior Care LLC (23-01266-11); VH Willows Townhomes LLC (23-01262-11); iCap @ UW, LLC (23-01244-
11); VH 2nd Street Office, LLC (23-01259-11); VH Pioneer Village LLC (23-01263-11); iCap Funding LLC (23-01246-11); iCap

NOTICE OF JOINT DIP MOTION AND 9019
MOTION

- 1

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**NOTICE OF (I) JOINT MOTION
FOR ORDER AUTHORIZING THE
DEBTORS TO OBTAIN
SUPPLEMENTAL POSTPETITION
SECURED FINANCING AND (II)
MOTION TO APPROVE
COOPERATION AGREEMENT**

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PLEASE TAKE NOTICE that on February 23, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the following motions (the “Motions”):

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• *Joint Motion of the Debtors and Committee for Order: (I) Authorizing the Debtors to Obtain Supplemental Postpetition Secured Financing; (II) Granting Superpriority Administrative Expense Claims; and (III) Granting Related Relief [ECF No. 467] (the “DIP Motion”); and*
• *Debtors’ Motion to Approve Entry Into and Performance Under the Cooperation Agreement [ECF No. 470] (the “9019 Motion”).*

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PLEASE TAKE FURTHER NOTICE that the DIP Motion seeks relief pursuant to sections 105, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) authorizing the Debtors to obtain supplemental postpetition secured financing in an aggregate principal amount not to exceed \$5,000,000, grant liens to secure the DIP loan facility, grant superpriority claims, and grant related relief.

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As part of the DIP Motion, the Debtors are also seeking findings that the Debtor’s business operated as a Ponzi Scheme. If Ponzi Findings are made, they will affect litigation claims and recovery efforts that may be pursued against various third parties that did business with the Debtors, including but not limited

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Management LLC (23-01268-11); iCap Realty, LLC (23-01260-11) ; Vault Holding, LLC (23-01270-11); iCap Pacific Development LLC (23-01271-11); iCap Holding LLC (23-01272-11); iCap Holding 5 LLC (23-01273-11); and iCap Holding 6 LLC (23-01274-11).

**NOTICE OF JOINT DIP MOTION AND
9019 MOTION**

- 2

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TELEPHONE: 206.319.7052

1 to lenders, brokers, investors, consultants, and professional firms. More details
2 regarding the Ponzi Findings request are provided below in this Notice.

3 PLEASE TAKE FURTHER NOTICE that the DIP Motion is based on this
4 Notice, the DIP Motion itself, the *Declaration of Lance Miller in Support of Joint*
5 *Motion for Order Authorizing the Debtors to Obtain Supplemental Postpetition Secured*
6 *Financing* attached to the Motion, the *Supplemental Declaration of Lance Miller in*
7 *Support of Postpetition Financing and Related Relief* [ECF No. 468], the *Declaration*
8 *of Jeffrey H. Kinrich in Support of Postpetition Financing and Related Relief* [ECF No.
9 469], the arguments and representations of counsel to the Debtors who will appear at
10 the hearing on the DIP Motion, and any other supporting briefs and admissible evidence
11 properly brought before the court at or before the hearing on the DIP Motion.

12 **PONZI FINDINGS REQUESTED RELIEF:**

13 AS NOTED ABOVE, IN CONNECTION WITH THE DIP MOTION, THE
14 DEBTORS ARE SEEKING FINDINGS THAT FOR YEARS DURING THE
15 PREPETITION PERIOD, THE DEBTORS' BUSINESS ENTERPRISE
16 OPERATED AS A PONZI SCHEME (THE "PONZI FINDINGS"). IF THE
17 PONZI FINDINGS ARE MADE, THE DEBTORS (AND ANY SUCCESSOR IN
18 INTEREST, INCLUDING ANY LIQUIDATING TRUSTEE APPOINTED
19 PURSUANT TO A CHAPTER 11 PLAN OF LIQUIDATION OR CHAPTER 7
20 TRUSTEE), WILL BE ENTITLED TO THE BENEFIT OF THE PONZI
21 SCHEME PRESUMPTION IN RECOVERY EFFORTS AND LITIGATION
22 AGAINST THIRD PARTIES. THE "PONZI PRESUMPTION" IS THAT THE
23 TRANSFERS AND BUSINESS TRANSACTIONS WERE DONE WITH
24 ACTUAL INTENT TO HINDER, DELAY, OR DEFRAUD CREDITORS. THIS
25 PRESUMPTION MAY AID RECOVERY AND LITIGATION EFFORTS WITH
26 RESPECT TO AVOIDANCE AND RECOVERY ACTIONS AGAINST THIRD

1 PARTIES THAT RECEIVED TRANSFERS FROM THE DEBTORS,
2 INCLUDING ANY CAUSES OF ACTION ASSERTED UNDER SECTIONS 544
3 AND 548 OF THE BANKRUPTCY CODE AND ANY OTHER APPLICABLE
4 FRAUDULENT TRANSFER, DEBTOR/CREDITOR LAW, AVOIDANCE AND
5 RECOVERY STATUTES OR CAUSE OF ACTIONS, CLAIMS, OR
6 ARGUMENTS.

7 PLEASE TAKE FURTHER NOTICE that the 9019 Motion seeks relief
8 pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, Rule 9019 of the
9 Federal Rules of Bankruptcy Procedure, and Rule 9019-1 of the Local Rules of the
10 United States Bankruptcy Court for the Eastern District of Washington approving entry
11 into and performance under that certain Cooperation Agreement dated February 6,
12 2024, by and among the Debtors and the unsecured creditors' committee, which
13 provides for the cooperation and joint prosecution of certain specified claims related to
14 the Debtors' Ponzi scheme.

15 PLEASE TAKE FURTHER NOTICE that the 9019 Motion is based on this
16 Notice, the 9019 Motion itself, the *Declaration of Lance Miller in Support of Motion to*
17 *Approve Entry Into and Performance Under the Cooperation Agreement* attached to the
18 9019 Motion, the arguments of counsel, and any other supporting briefs and admissible
19 evidence properly brought before the court at or before the hearing on the 9019 Motion.

20 PLEASE TAKE FURTHER NOTICE that copies of the Motions and the
21 supporting documents are available upon request to counsel for the Debtors at
22 ktarazi@buchalter.com, may be reviewed at the office of the Clerk of the United States
23 Bankruptcy Court, may be viewed at the United States Bankruptcy Court PACER
24 website at <http://www.waeb.uscourts.gov>, or may be viewed on the website of the
25 Debtors' claims agent at <https://cases.creditorinfo.com/iCap>. **THE DEBTORS MAY**
26 **FILE ADDITIONAL SUPPORTING DOCUMENTS PRIOR TO THE**

1 **HEARING AND YOU ARE ENCOURAGED TO REGULARLY CHECK THE**
2 **DOCKET FOR ANY SUCH FILINGS PRIOR TO THE HEARING.**

3 **PLEASE TAKE FURTHER NOTICE** that objections to the Motions must be
4 filed with the United States Bankruptcy Court for the Eastern District of Washington,
5 402 East Yakima Avenue, Suite 200, Yakima, WA 98901, no later than March 18,
6 2024. **If you do not submit an objection, the court may enter the proposed order**
7 **without a hearing or any further notice.**

8 **PLEASE TAKE FURTHER NOTICE** that the hearing will be held on March
9 27, 2024 at 10:00 a.m. (Pacific Time) at Tower Bldg, 2nd Floor Courtroom, 402 East
10 Yakima Avenue, Yakima, WA.

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12 DATED this 23rd day of February 2024.

13 BUCHALTER
14 A Professional Corporation

15
16 By /s/ Dakota Pearce
Dakota Pearce (WSBA 57011)

17 BERNARD D. BOLLINGER, JR. (Admitted *Pro*
18 *Hac Vice*)
KHALED TARAZI (Admitted *Pro Hac Vice*)
19 BUCHALTER, a Professional Corporation

20 *Counsel to Debtors and Debtors in Possession*

21 And

22 JULIAN I. GURULE (Admitted *Pro Hac Vice*)
23 O'MELVENY & MYERS LLP

24 *Co-Counsel to Debtors and Debtors in Possession*